



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912**

**GENERAL/SPECIAL NOTICE LETTER
URGENT LEGAL MATTER -- PROMPT REPLY NECESSARY
CERTIFIED MAIL: RETURN RECEIPT REQUESTED**

April 17, 2019

Park Corporation c/o
Jeffrey D. Talbert, Esq.
Preti Flaherty
One City Center
P.O. Box 9546
Portland, ME 04112-9546

Re: General/Special Notice of Potential Liability and Invitation to Perform or Finance Non-time Critical Removal Action Pursuant to Section 122(e) of CERCLA at Keddy Mill Superfund Site in South Windham, Maine

Dear Mr. Talbert:

The U.S. Environmental Protection Agency ("EPA") has received and reviewed the December 16, 2016 response to its October 13, 2016 Information Request, which was sent to Park Corporation ("Park") in connection with the Keddy Mill Superfund Site located in South Windham, Maine ("Site"). Based on your response and other available information, EPA has determined that Park may be responsible under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), commonly known as the federal "Superfund" law, for cleanup of the Site or costs EPA has incurred in cleaning up the Site.

Explanation of Potential Liability

Under CERCLA, specifically Sections 106(a) and 107(a), potentially responsible parties ("PRPs") may be required to perform cleanup actions to protect the public health, welfare, or the environment. PRPs may also be responsible for costs incurred by EPA in cleaning up the Site, unless the PRP can demonstrate divisibility or assert one of the statutory defenses. PRPs include current and former owners and operators of a site, as well as persons who arranged for treatment and/or disposal of any hazardous substances found at the site, and persons who accepted hazardous substances for transport and selected the site to which the hazardous substances were delivered.

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Based on the information collected, EPA believes that Park may be liable under Section 107(a) of CERCLA with respect to the Site, as a current or previous owner and/or operator of the Site. Enclosed with this letter is an affidavit and supporting documents which provide further information about contamination at the Site (Enclosure A). Under the federal Superfund law, Park and the other PRPs at the Site are responsible for the costs of cleaning up the Site. EPA has selected a short-term cleanup approach (formally known as a non-time critical removal action or “NTCRA”) for the Site, which is described in a document called an Action Memorandum issued by EPA on September 28, 2018. A Remedial Investigation/Feasibility Study for the Site is ongoing.

As you may be aware, on January 11, 2002, President Bush signed into law the Superfund Small Business Liability Relief and Brownfields Revitalization Act. This Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. You may download a copy of the law at <http://www.gpo.gov/fdsys/pkg/PLAW-107publ118/pdf/PLAW-107publ118.pdf> and review EPA guidances regarding these exemptions at <http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/>. EPA has created a number of helpful resources for small businesses. EPA has established the National Compliance Assistance Clearinghouse as well as Compliance Assistance Centers which offer various forms of resources to small businesses. You may inquire about these resources at <http://www.epa.gov/compliance/compliance-assistance-centers>. In addition, the EPA Small Business Ombudsman may be contacted at <http://www.epa.gov/resources-small-businesses/forms/contact-us-about-resources-small-businesses>. Finally, EPA has developed a fact sheet about the Small Business Regulatory Enforcement Fairness Act (SBREFA) and information on resources for small businesses, which is available on the Agency’s website at <http://www.epa.gov/compliance/small-business-resources-information-sheet>.

Special Notice and Negotiation Moratorium

EPA has determined that use of the special notice procedures set forth in Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), may facilitate a settlement between Park, the other PRPs, and EPA for implementation of the NTCRA. Under Section 122(e), this letter triggers a 60-day moratorium on certain EPA response activities at the Site. During this 60-day moratorium, EPA will not begin response action at the Site. However, EPA reserves the right to take action at the Site at any time should a significant threat to human health or the environment arise.

During this 60-day period, Park and the other PRPs are invited to participate in formal negotiations with EPA in an effort to reach a settlement to conduct or finance the response action at the Site. The 60-day negotiation period ends on June 17, 2019. The 60-day negotiation moratorium will be extended for an additional 60 days if the PRPs provide EPA with a “good faith offer” to conduct or finance the response action. If EPA determines that your proposal is not a “good faith offer,” you will be notified in writing of EPA’s decision to end the moratorium. If the moratorium is extended for an additional 60 days, negotiations will conclude on August 16, 2019. If settlement is reached between EPA and the PRPs within the 120-day negotiation moratorium, the settlement will be embodied in an administrative settlement agreement and order on consent (“AOC” or “Administrative Order”).

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If a “good faith offer” is not received within 60 days, or a timely settlement cannot be reached, EPA may take appropriate action at the Site, which may include either of the following options: (1) EPA may fund the removal action and pursue a cost recovery claim under Section 107 of CERCLA, 42 U.S.C. § 9607, against Park and/or the other PRPs; or (2) EPA may issue a Unilateral Administrative Order (“UAO”) to Park and/or the other PRPs under Section 106(a) of CERCLA, 42 U.S.C. § 9606, requiring Park and/or the other PRPs to perform the work described in the Action Memorandum. If the recipients of a UAO refuse to comply with the UAO, EPA may pursue civil litigation against the recipients to require compliance.

Good Faith Offer

A proposed Administrative Order (Enclosure B) and Statement of Work (Appendix C to the Administrative Order) is enclosed to assist you in developing a “good faith offer.”¹ As indicated, the 60-day negotiation moratorium triggered by this letter is extended for 60 days if the PRPs submit a “good faith offer” to EPA. A “good faith offer” to conduct or finance the NTCRA is a written proposal that demonstrates the qualifications and willingness of the PRPs to conduct or finance the NTCRA, and includes the following elements:

- A statement of your willingness and financial ability to implement the requirements of the Action Memorandum and proposed Administrative Order and that provides a sufficient basis for further negotiation;
- A demonstration of your technical capability to carry out the NTCRA, including identification of the firm(s) that may actually conduct the work or a description of the process that will be undertaken to select the firm(s);
- A response to the proposed Statement of Work. If your offer contemplates modifications to the Statement of Work, please make revisions or edits to the Statement of Work and submit a version showing your proposed modifications to it;
- A statement of your willingness to reimburse EPA for costs EPA will incur in overseeing your implementation of the NTCRA;
- A response to the proposed Administrative Order. If your offer contemplates modifications to the Administrative Order, please make revisions or edits to the Administrative Order and submit a version showing your proposed modifications to it.
- A list identifying each party on whose behalf the offer is being made, including name, address, and telephone number of each party; and

¹This draft Administrative Order is not currently binding on EPA and is subject to revision and approval by EPA. It is based on the model AOC, which is available at https://cfpub.epa.gov/compliance/models/view.cfm?model_ID=754.

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- The name, address, and phone number of the party who will represent you in negotiations.

Demand for Reimbursement of Costs

With this letter, EPA demands that you reimburse EPA for its costs incurred to date, and encourages you to voluntarily negotiate an Administrative Order in which you and the other PRPs agree to perform the NTCRA.

In accordance with Section 104 of CERCLA, 42 U.S.C. § 9604, EPA has already taken certain response actions and incurred certain costs in response to conditions at the Site. These response actions include:

- EPA conducted a Preliminary Assessment Site Inspection on December 21, 2011, completed a Trip Report in October 2012, and completed a Final Site Investigation Report on January 15, 2013; EPA completed the Hazard Ranking Listing Package for proposal of the Site to the NPL in December 2013;
- Following the May 12, 2014 listing of the Site to the NPL in the Federal Register, 79 FR 26853, EPA initiated a Remedial Investigation ("RI") in 2015 to identify the characteristics of the Site, to define the nature and extent of soil, air, surface water/sediment, fish and ground water contamination at the Site, and to characterize the risk posed by the Site;
- EPA conducted an evaluation of the Site mill building in 2016 and determined that an Engineering Evaluation/Cost Analysis ("EE/CA") should be conducted with respect to demolition of the building as a Non-Time Critical Removal Action ("NTCRA"); and
- EPA selected a NTCRA in an Action Memorandum dated September 28, 2018.

EPA is seeking to recover from Park and the other PRPs at the Site its response costs and all the interest authorized to be recovered under Section 107(a) of CERCLA, 42 U.S.C. § 9607. To date, the approximate total response costs identified through September 25, 2018 for the Site are **\$5,775,384**. Under Section 107(a) of CERCLA, EPA hereby makes a demand for payment from Park and the other PRPs for the above amount plus all interest authorized to be recovered under Section 107(a). A summary of these costs is enclosed.

Some or all of the costs associated with this Notice may be covered by current or past insurance policies issued to Park. Most insurance policies will require that you timely notify your carrier(s) of a claim against you. To evaluate whether you should notify your insurance carrier(s) of this demand, you may wish to review current and past policies, beginning with the date of Park's first contact with the Site, up to the present. Coverage depends on many factors, such as the language of the particular policy and state law.

In the event that Park files for protection in a bankruptcy court, Park must include EPA as a creditor, because EPA has a potential claim against Park. EPA reserves the right to file a proof of claim or application for reimbursement of administrative expenses.

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PRP Group

To assist the PRPs in negotiating with EPA concerning this matter, EPA is attaching to this letter copies of the letters sent to the other PRPs receiving this Notice, including their names and addresses (Enclosure C).

Administrative Record

In accordance with Section 113 of CERCLA, 42 U.S.C. § 9613, EPA has established an Administrative Record containing the documents that serve as the basis for EPA's selection of the appropriate response action for the Site.

The administrative record is available for review online at <https://semspub.epa.gov/src/collection/01/AR65660> or <https://go.usa.gov/xQv95>. Additional information about the Site is also available at www.epa.gov/superfund/keddy. The Administrative Record is located at:

EPA New England
Office of Site Remediation & Restoration
Records and Information Center
5 Post Office Square, Suite 100 (OSRR02-3)
Boston, MA 02109-3912
(by appointment)
617-918-1440 (phone)
617-918-0440 (fax)

Windham Public Library
217 Windham Center Road
Windham, Maine 04062
207-892-1908 (phone)
207-892-1915 (fax)
www.windham.lib.me.us/

You may wish to review the Administrative Record to assist you in responding to this letter, but your review should not delay such response beyond the 60-day period provided by CERCLA.

PRP Response and EPA Contact Person

You are encouraged to contact EPA by June 17, 2019 to indicate Park's willingness to participate in future negotiations concerning this Site. You may respond individually or through a steering committee if such a committee has been formed. If EPA does not receive a timely response, EPA will assume that Park does not wish to negotiate a resolution of Park's liabilities in connection with the Site, and that Park has declined any involvement in performing the response activities.

Your response to this Special Notice Letter, including written proposals to perform the NTCRA for the Site, should be sent to:

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Leslie McVickar
Remedial Project Manager
U.S. Environmental Protection Agency
Office of Site Remediation and Restoration
5 Post Office Square, Suite 100 (OSRR07-4)
Boston, MA 02109-3912

The factual and legal discussions in this letter are intended solely to provide notice and information, and such discussions are not to be construed as a final EPA position on any matter set forth herein. Due to the seriousness of the environmental and legal problems posed by the conditions at the Site, EPA urges that you give immediate attention and prompt response to this letter.

If you have any questions regarding the technical aspects of this letter, please contact Leslie McVickar, Remedial Project Manager, at (617) 918-1374. For legal matters, please direct questions to Susan Scott, Senior Enforcement Counsel, at 617-918-1778.

My staff and I look forward to working with you during the coming months.

Sincerely,



Bryan Olson, Director
Office of Site Remediation and Restoration
EPA, Region 1

cc: Rebecca Hewitt, Maine DEP Project Manager
Susan Scott, EPA Senior Enforcement Counsel
Leslie McVickar, EPA Remedial Project Manager
Alex Sherrin, EPA On-Scene Coordinator
Patti Ludwig, EPA CERCLIS Data Administrator

Enclosures: (mailed previously under separate cover)
Enclosure A - Affidavit and Supporting Information (James Israel 2017)
Enclosure B - Draft Administrative Order (EPA)

- Appendix A – 09/28/2018 Action Memorandum (EPA)
- Appendix B – Site Layout Figure
- Appendix C – NTCRA Scope of Work (EPA)
 - Attachment 1 – 2017 Engineering Evaluation/Cost Analysis (ERM)
 - Attachment 2 – 2015 Conceptual Site Model (Nobis)

Enclosure C – Copies of Letters sent to other Notice Recipients